

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

ESTATE OF NENA CHARLEY,

Plaintiffs,

VS.

NO. CV 22-0033 JB

UNITED STATES OF AMERICA, et al.,

Defendants.

Transcript of Omnibus Proceedings before  
The Honorable James O. Browning, United States  
District Judge, Albuquerque, Bernalillo County, New  
Mexico, commencing on January 5, 2024.

For the Plaintiff: Ms. Melanie Ben; Mr. Luke Holmen

For the Defendant: Mr. Brett Eaton; Ms. Samantha  
Kelly

For the Defendants (Via Zoom): Mr. John Checkett;  
Ms. Denise Chanez

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1 know what he could do if he were asked. But I don't  
2 think he's been asked. So I don't think he's a  
3 viable candidate.

4 I think all that we really have is Dr.  
5 Glazer as a possible replacement. And I'm just  
6 troubled about relying on someone as a causation  
7 expert when they say they're not an expert in that  
8 field. I think that would not be correct. I think  
9 you've first got to be an expert in the field. And  
10 I understand he's an expert in the breach of duty  
11 portion of the case, and I understand that. But I  
12 think now, trying to stretch him into causation  
13 would, A, not be fair to the defendants, and would  
14 be a stretch that intellectually doesn't stand up.

15 So I'm inclined to grant the three  
16 motions. I think that I need to probably wrap up  
17 this case, and send it on to the Tenth, and see if I  
18 got the issue on Dr. Polsky correct. But I think  
19 that, up until probably I ruled on the motion to  
20 reconsider earlier this afternoon, I think we all  
21 thought that probably the case was at an end, and  
22 that plaintiffs -- had pretty much said as much many  
23 times on November 14, and again today.

24 So I'm not going to grant any request that  
25 the plaintiffs be allowed to get a new expert. I

1 think that defeats the purpose. It would be better  
2 to try to shoehorn Dr. Polsky back in here than just  
3 get a new expert. Either one of those are going to  
4 be terribly disruptive to the Court.

5 So I'm inclined to grant the three  
6 motions. I think the best thing to do at this point  
7 is not have anybody, including the Court, rushing to  
8 try to get something out and get ready for trial.  
9 So I think, at the present time, we ought to just  
10 pause on this case; let me get these opinions out.  
11 And then if I, in writing them, come to a different  
12 conclusion, then we can get back together. But I'm  
13 going to go ahead and vacate the pretrial conference  
14 as well as the trial.

15 Because I did give permission to the  
16 plaintiff to take some discovery, do some discovery,  
17 and I said they could supplement their response to  
18 these motions, and I've also told the defendants  
19 that they can file replies, I'll let y'all go ahead  
20 and do that work.

21 But as far as pretrial conference and  
22 trial dates, unless somebody tells me that they want  
23 those to remain, I'd be inclined to vacate so it  
24 takes pressure off of us to try to meet any of those  
25 deadlines.